

## Assembly Bill No. 330

### CHAPTER 135

An act to amend Sections 55601.5, 55601.6, and 55601.8 of the Food and Agricultural Code, relating to agriculture, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 27, 1997. Filed with  
Secretary of State July 28, 1997.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 330, Bordonaro. Grape crusher processors: reporting.

(1) Existing law requires every processor who crushes grapes in California to furnish to the Secretary of Food and Agriculture reports on the total number of tons of grapes purchased by the processor in California during the preceding crush within each grape-pricing district and information concerning the final prices, as specified.

This bill would revise those reporting provisions, as specified.

(2) The bill also would make corresponding and other technical, nonsubstantive changes.

(3) The bill would declare that it is to take effect immediately as an urgency statute.

*The people of the State of California do enact as follows:*

SECTION 1. Section 55601.5 of the Food and Agricultural Code is amended to read:

55601.5. (a) (1) Notwithstanding Section 55461, on or before January 10 of every year, every processor who crushes grapes in California shall furnish to the secretary, on forms provided by the secretary, a report that includes all of the following:

(A) The total number of tons of grapes purchased by the processor in the State of California during the preceding crush within each grape-pricing district, broken down by total tons purchased, variety, and price, including any bonuses or allowances, and sugar calculations.

(B) The total number of tons of grapes purchased by the processor in California in nonrelated purchases during the preceding crush within each grape-pricing district, broken down by total tons purchased, variety, and price, including any bonuses or allowances, and sugar calculations.

(C) The total number of tons of each variety crushed within each grape-pricing district and the average sugar content of each variety within each grape-pricing district.

(2) (A) When reporting price within the category of all tonnage purchased, processors shall include grapes purchased from (i) growers for wine, wine vinegar, juice, concentrate, and beverage brandy, (ii) another processor only if that processor was also the grower of the grapes, (iii) growers that are considered separate entities from the processor operation, or (iv) growers or other processors, but not by the reporting processor; and shall exclude (i) material other than grapes, and defects, or other weight adjustments deducted from the gross-weight ticket, (ii) any raisin-distilling material, (iii) grapes grown by the processor from vineyards that are not considered separate entities, (iv) grapes purchased from other processors that were previously purchased from growers, or (v) grapes crushed to grower accounts or crushed for other wineries. If several varieties were packaged together and purchased for one price, the processor shall report the average price per ton as one mixed lot, and when reporting crush information, shall report individual variety and tonnage information.

(B) When reporting price within the category of nonrelated purchases, processors shall exclude tonnage of grapes purchased from a grower if, during the reporting year: (i) the grower or an affiliate of the grower, or both the grower and the affiliate of the grower, owned, directly or indirectly, at least 5 percent of the indicia of ownership or voting authority of the processor, (ii) the processor or an affiliate of the processor, or both the processor and the affiliate of the processor, owned, directly or indirectly, at least 5 percent of the indicia of ownership or voting authority of the grower, or (iii) the processor or an affiliate of the processor, or both the processor and the affiliate of the processor, provided long-term financing to the grower in exchange for rights or options to purchase a significant portion of the grower's harvest.

(b) On or before February 25 of every year, each processor who crushes grapes in California shall furnish to the secretary information concerning the final prices, including any bonuses or allowances, paid by variety and grape-pricing district to all growers holding reference price contracts in effect prior to January 1, 1977, which payments have not been reported on January 10.

(c) (1) The secretary may not release or otherwise make available any information furnished by an individual processor under this section, except in proceedings brought against the processor by the secretary for the purpose of enforcing this section, or in the case of a producer who holds any reference price-grape purchase contract, to whom there may be furnished, upon request and at a reasonable cost, the information needed to verify the reference price, including any bonuses or allowances, set forth in the contract.

(2) The secretary shall not release or otherwise make available any information furnished by an individual processor under this section to any other division of the department except in accordance

with a subpoena issued in accordance with Section 1985.3 of the Code of Civil Procedure.

(d) The secretary shall enforce the collection of the information and, on or before February 10 of each year, shall publish a preliminary summary report on the preceding crush. The report shall include all of the following:

(1) The weighted average price paid on the basis of the prices, including any bonuses or allowances, reported and average sugar content for each grape variety purchased within each grape-pricing district.

(2) The total number of tons of grapes crushed and the average sugar content for each grape variety within each grape-pricing district.

(3) Each price category paid, separated by sugar calculations, if any, and the percentage each represents of the total for each variety within each grape-pricing district.

(4) Commencing with the report for the 1997 crush, in a separate and independent table without affecting or modifying existing tables, by weighted average price only, nonrelated purchases, by variety within each grape-pricing district excluding any bonuses, allowances, sugar calculations, and tonnage.

On or before March 10 of each year, the secretary shall publish a final summary report, which shall contain all of the data furnished by the processors on or before January 10 and on or before February 25 of each year covering purchases under reference price contracts. The secretary may publish an addendum or supplemental report when reasonably necessary to correct any erroneous or misleading information contained in the annual report required by this section.

(e) The forms provided to processors by the secretary pursuant to this section shall provide for the separate reporting of grapes used by a processor (1) as distilling material and (2) for both beverage brandy and other than beverage brandy. A processor shall report all grapes used as distilling material by variety. The secretary, in determining the weighted average price paid for each grape variety purchased within each grape-pricing district, shall not include the prices paid for grapes of any variety used as distilling material for other than beverage brandy in determining the weighted average price. The secretary's report shall include a separate summary regarding grapes used by processors as distilling material.

(f) All grape purchase contracts entered into on or after January 1, 1977, shall provide for a final price, including any bonuses or allowances, to be set on or before the January 10 following delivery of the grapes purchased. Any grape purchase contract entered into in violation of this provision is illegal and unenforceable. For the purpose of this section, a grape purchase contract shall not include any existing supply contract between a nonprofit cooperative association and a commercial processor.



(g) (1) If the department reasonably believes that a processor has failed, refused, or neglected to provide the information required herein, or if the department finds apparent discrepancies in the information reported, the department may audit or investigate in accordance with Article 11 (commencing with Section 55721) or proceed in accordance with Article 15 (commencing with Section 55841). Injunctive relief under Section 55921 shall issue only upon a finding by a court of competent jurisdiction that a processor has done any of the following:

(A) Refused to submit required information after the department provides reasonable notice to the processor of the processor's obligations and rights under this chapter.

(B) Misreported a fact, knowing that fact to be false, or in reckless disregard for whether the fact was true.

(2) Both the refusal to submit after the provision of reasonable notice and the misreporting of a fact under the circumstances set forth in this subdivision shall constitute violations of this chapter. Neither a refusal to submit nor a misreporting of a fact under this subdivision shall be prosecuted pursuant to Article 18 (commencing with Section 55901) or subject to civil penalties under Article 19 (commencing with Section 55921).

(3) In the case of misreporting in any action authorized by this section, it shall be a defense for a processor to rely on information provided to him or her by a producer with respect to whether a purchase is a related purchase.

(4) In the case of a refusal to report or misreporting, the department shall not commence an audit or investigation, other than a routine audit based on scientifically proven random sampling methods, without first disclosing to the processor being audited or investigated any and all information that constitutes the department's belief that the processor has not complied, including the identities of all persons providing information on potential violations to the department.

(5) Anonymous complaints, unattributable information, or undocumented information shall not constitute reasonable belief and shall not be the basis for any investigation or audit action brought under this section. The department shall inform the processor of its reasons for auditing.

(h) For the purposes of this section, the following definitions shall apply:

(1) "Affiliate" or "affiliated with" means a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control of another person. For the purposes of this paragraph, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of any person.



(2) “Grape-pricing district” means a district used by the federal-state cooperative market news services, as provided in Section 58231.

(3) “Long-term financing” means (i) financing that by its terms is due over a period of more than one year, or (ii) more than 180 days if there is a purchase agreement between a grower and a processor or (iii) if there is a farming agreement where the purchase price is on a per-acre basis.

(4) “Person” includes an individual, partnership, corporation, limited liability company, firm, company, or other entity.

(5) “Purchase” means the taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift, or any other voluntary transaction creating an interest in property. For the purposes of this paragraph, “sale” shall consist of the passing of title from the seller to the buyer for a price.

SEC. 2. Section 55601.6 of the Food and Agricultural Code is amended to read:

55601.6. (a) To provide funds to carry out Section 55601.5, each processor who crushes more than 100 tons of grapes in California shall pay to the secretary the amount determined by the secretary to be necessary to cover these costs, but not to exceed ten cents (\$0.10) per ton of grapes received for crushing, fresh weight equivalent, during each marketing season beginning July 1 and ending the following June 30. However, five cents (\$0.05) per ton of grapes received for crushing, or one-half of the fee if the fee is less than ten cents (\$0.10), shall be paid by the processor who crushes grapes and five cents (\$0.05) per ton of grapes received for crushing, including any grapes produced by the processor, or one-half of the fee if the fee is less than ten cents (\$0.10), shall be paid by the processor who crushes grapes and may be deducted from moneys owed to the producer.

(b) The amount of the fee shall be paid to the secretary on or before January 10 of each year on all grapes received for crushing through December 15. The amount of the fee on any grapes received for crushing after December 15 shall be paid to the secretary on or before June 30 of that marketing season.

(c) The secretary may fix the fee at a lesser amount and may adjust the fee from marketing season to marketing season.

(d) Any processor who crushes grapes who fails, neglects, or refuses to pay the required fee shall be in violation of this chapter. Any processor who crushes grapes shall not be entitled to pass the penalty on to the producer of the grapes.

(e) If the secretary conducts an acreage survey pursuant to Section 55613, the secretary may increase the fee charged pursuant to subdivision (a) by not more than four cents (\$0.04) per ton of grapes received for crushing, fresh weight equivalent, to cover costs of the survey. The same ratio of payment between processor and

producer shall be maintained if the fee is increased pursuant to this subdivision.

(f) The fee authorized by subdivision (a) for the reports required to be prepared by the secretary pursuant to Section 55601.5 and the increase in that fee authorized by subdivision (e) for the survey authorized by Section 55613 shall be established by the secretary so as to generate only the amount of revenue that the secretary reasonably anticipates will be needed to cover the cost incurred by the secretary in gathering and producing the reports required by Section 55601.5, in conducting the survey authorized by Section 55613, and in conducting related enforcement activities. The funds generated by the fees authorized by this section shall be used only for the purpose of gathering the information and producing the reports required to be prepared by the secretary pursuant to Section 55601.5 and conducting the survey authorized by Section 55613.

(g) All moneys received under this section shall be deposited in the State Treasury to the credit of the Department of Food and Agriculture Fund.

SEC. 3. Section 55601.8 of the Food and Agricultural Code is amended to read:

55601.8. (a) The secretary shall not release, or otherwise make available, any information furnished by a cooperative or an individual processor under Section 55601.7 or this section, including information relating to the weighted average prices paid, except in proceedings brought against the processor by the secretary for the purpose of enforcing this section.

(b) The secretary shall (1) enforce the collection of the information required in Section 55601.7, (2) on or before January 15, publish a summary report for freestone peaches used for freezing and drying and, (3) on or before October 20, publish a summary report for walnuts, raisins, and prunes, reflecting the statistics derived from the processor reports. The summary reports shall include summaries of all information required to be furnished to the secretary.

(c) The secretary may dispense with the reporting requirements and his or her duties to enforce the collection of this information and the publishing of summary reports if the secretary determines that the same or similar information is made public information within the same time periods of subdivision (b) by any federal or state committee or organization responsible for regulating the handling of any of the commodities subject to this section.

(d) (1) To provide funds to carry out Section 55601.7 and this section, each processor, including agricultural cooperatives, subject to these reporting requirements shall pay to the secretary the amount determined by the secretary to be necessary to cover these costs, but not to exceed twelve cents (\$0.12) per fresh ton for freestone peaches, twelve cents (\$0.12) per dry ton for raisins and prunes, and

twelve cents (\$0.12) per inshell dry ton for walnuts handled by the processor during each marketing season.

(2) (A) The amount of the fee for freestone peaches used for freezing and drying shall be paid to the secretary on or before December 10 for all freestone peaches used for freezing and drying received from April 1 through November 30.

(B) The amount of the fee for any freestone peaches used for freezing and drying received from December 1 to March 31, inclusive, shall be paid to the secretary on or before May 1 of the next marketing season.

(C) The amount of the fee shall be paid to the secretary on or before May 1 of each year for all other commodities received from September 1 to March 31, inclusive.

(D) The amount of the fee for any other commodity received from April 1 to August 31, inclusive, shall be paid to the secretary on or before September 1 of the next marketing season.

(3) The secretary may fix the fee at a lesser amount and may adjust the fee from marketing season to marketing season. Any processor who fails, neglects, or refuses to pay the required fee is in violation of this chapter. Any such processor shall not pass the penalty on to the producer of the commodity.

(4) All funds received under this subdivision shall be deposited in the State Treasury to the credit of the Department of Food and Agriculture Fund.

(e) If the secretary finds that any processor has failed, refused, or neglected to provide the information required by this section, the secretary may proceed in accordance with Article 11 (commencing with Section 55721).

(f) Any cooperative subject to the reporting provisions of this section shall, in lieu of reporting prices, report all advances and other payments made as of the reporting date and its good faith estimate of the market value of the commodity for the crop year.

(g) The willful failure of any processor to report to the secretary, as required by this section, is a violation of this chapter and is a separate and distinct violation of this chapter for each day the processor fails to meet the reporting requirements.

(h) For the purpose of Section 55601.7 and this section, “marketing season” means the crop year that runs from September 1 to August 31, inclusive, for walnuts, raisins, and prunes, and the crop year that runs from April 1 to March 31, inclusive, for freestone peaches.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to apply the provisions of this act to the 1997 grape harvest, it is necessary that this act take effect at the earliest possible time.

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